IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE V.ESWARAIAH
WRIT PETITION NO : 10148 of 2004

Between:
Majji Surya jagannadham, S/o. Late Ramachandrudu,
R/o Bhimsingi, Vizianagaram District.

..... PETITIONER

AND

1 The State of A.P., rep. by the Commissioner of Sugars, Cane Development Ex-Officio Secretary to Govt.,
of A.P., Hyd.
2 The Managing Director, Sri Vijayarama Gajapathi, Co-Operative Sugars Ltd., Bhimsingi post, Vizianagaram District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue rule nisi calling for the records leading upto and inclusive of the impugned proceedings of the 2nd respondent herein in Rc.No. Accts./Estt/1/76 dt. 31.5.2004 , and quash the said proceedings of the 2nd respondent herein by issuing an appropriate writ, order or direction, in the nature of certiorari, as being illegal, unjust, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

Counsel for the Petitioner:MR.E.V.BHAGIRATHA RAO

Counsel for the Respondents: GP FOR INDUSTRIES & COMMERCE

The Court made the following :

O R D E R:

The petitioner questions the proceedings, dated 31.05.2004 issued by the 2nd respondent-Managing Director of Sri Vijayarama Gajapathi Co-operative Sugars Limited, informing the petitioner that as per the office records his date of birth is 01.07.1946 and he has to retire from the services of the Society with effect from 30.06.2004 on attaining the age of superannuation of 58 years as per the existing rules of the Society. Aggrieved by the same, this writ petition is filed.

The learned counsel for the petitioner submits that as per the orders of the Government issued in G.O.Ms.no.396 Industries & Commerce (Sugar-III) Department, dated 03.09.1990 and the Circular in R.C.No.10169/90-C1, dated 08.03.1991 of the Director of Sugars, Government of Andhra Pradesh, Hyderabad, the superannuation of employees in Co-operative Sugar Factories is increased to 60 years from 58 years. Therefore, the petitioner is entitled to continue to be in service till he attains the age of 60 years.

On the other hand, the learned counsel for the respondents submits that the 2nd respondent Society is registered under the Co-operative Societies Act 7 of 1964 (for short 'the Act") by certain group of private persons. Neither the Government nor any other authority has an overall

control over the Society and the members of the elected body of the Society will look after the management. Hence, it does not come within the meaning of Article 12 of the Constitution of India and IT is not amenable to extraordinary WRIT jurisdiction of this Court. It is also stated that even as per G.O.Ms.No.396, dated 3.09.1990, the age of superannuation of a workman is only 60 years. As the said G.O. is made applicable only to the workmen, the petitioner is not entitled for the benefit extended to the workmen. Under Section 2 (s)(iii) of the Industrial Disputes Act, 1947, the person who employed mainly in a managerial or administrative capacity is not a workman and as per Section 2(s) iv of the Act, the person was employed in a supervisory capacity draws wages exceeding Rs.1600/- per mensem or exercises either by nature of the duties attached to the office or by reason of the powers vested in him functions, mainly of a managerial nature does not come within the meaning of the workman. As per G.O.Ms.no.396, dated 03.09.1990, Clause No.3, the age of superannuation of the workman of the Co-operative Sugar Factories is only extended to 60 years, but not the other persons who are not workmen. It is further stated that the petitioner is drawing a salary of Rs.8,000/- per month and under the petitioner, there are about 11 employees working including three Accountants and 8 Clerks and therefore, by any stretch of imagination, the petitioner can be described as a workman. It is further stated that the petitioner submitted a representation in the year 1998 to the Commissioner of Sugars and Cane Development, seeking promotion to the post of Chief Accounts Officer stating that he is working in a supervisory capacity.

For the foregoing reasons, I am of the view that the petitioner is not a workman and he is entitled to get the benefit of G.O.No.396, dated

03.09.1990. Even under Rule 28(v) of A.P.Co-operative Societies Rules, 1964, every paid servant and Officer of a Society otherthan those in the last Grade Service shall retire from service on attaining the age of 58 years. The said rule has been amended not withstanding anything contained in the bye laws, service regulations and common cadre regulations of the Act. Even if any bye law or regulation is there, the rule will prevail. There is no bye law entitling the petitioner who is not under the last grade service or within the category of workman entitling him to continue in service upto 60 years. Therefore, I do not find any merit in the writ petition.

The writ petition is accordingly dismissed. No costs.

31.08.2004

tjs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The State of A.P., rep. by the Commissioner of Sugars, Cane Development Ex-Officio Secretary to Govt.,
of A.P., Hyd.

2 The Managing Director, Sri Vijayarama Gajapathi, Co-Operative Sugars Ltd., Bhimsingi post, Vizianagaram District.

3. 2CCs to the G.P. For Co-operatives, High Court of A.P., Hyderabad.

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